Supreme Court, U.S.
FILED

03 564 AUG 05 2003

OFFICE OF THE CLERK

Case Number: _____

In The
Supreme Court Of The United States
2003 October Term

Paul Leon Ware,
Petitioner,

v.

Office of the State Attorney
For: The State of Florida,
Respondent.

On Petition For A Writ Of Certiorari To The District Court of Appeals, Second District of Florida

---

Petition For Writ Of Certiorari

Filed by:

Paul Leon Ware *
C/o 6557 Crescent Lake Dr.
Lakeland, Florida; 33813

Phone: (863) 644-0242

* Without agent or representative

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21 pp

Questions Presented

Is "aggravated assault without a firearm" sufficient for a felony charge under Florida Statutes 784.021?

Pursuant to Article V, Sec. 20(c)(3), Florida Constitution, does the circuit court have criminal jurisdiction without a valid felony charged?

Can the state circuit court or the prosecutor create new provisions of law for the charge of felony under Florida Statutes 784.021?

Was the lower court in error for denying the Petitioner's petition to vacate the void judgment for lack of findings of fact and conclusions of law to support a valid felony charge and subject matter jurisdiction?

Was the appeals court in error for affirming the denial of the Petitioner's petition to vacate the void judgment in the state circuit court for lack of a valid felony charge and without providing foundation for jurisdiction in fact and law?

Have the State courts acted in violation of the Florida Constitution, Article V, Section 20(c)(3) granting the circuit court jurisdiction over "all felonies" when there was no factual felony charged?

Have the said State courts acted in violation of the United States of America Constitution, Fourteenth Amendment as to due process of law?

List Of Parties

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Paul Leon Ware
C/o 6557 Crescent Lake Dr.
Lakeland, Florida 33813

Respondent: Office of State Attorney for:
The State of Florida
255 N. Broadway
Bartow, Florida 33830

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In The Supreme Court Of The United States
On Petition For Writ Of Certiorari

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix __A__ to the petition and is
[ ] reported at _____; or
[ ] has been designated for publication but is not yet reported; or
[X] is unpublished.

The opinion of the _____appeals_____ court appears at Appendix ___A___ to the petition and is

[ ] reported at _____; or
[ ] has been designated for publication but is not yet reported; or
[X] is unpublished.

Jurisdiction

[X] For cases from **state courts:**

The date on which the highest state court decided my case was May 7, 2003.
A copy of that decision appears at Appendix __ ____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

This petition contains a federal question.

Additionally, this Court has jurisdiction to review this action in that the Petitioner's appeal was denied by the Second District Court of Appeals of Florida ruling "PER CURIUM AFFIRMED" without opinion, making the Second District Court of Appeals the court of last resort in the state pursuant to the Florida Constitution, Article V, Section 3(b), in that there is no provision therein for review to be in the Supreme Court of Florida.

Constitutional And Statutory Provisions Involved

United States Constitution, Fourteenth Amendment:

(1) .... nor shall any State .... deny to any [citizen] within its jurisdiction the equal protection of the laws.

Florida Constitution;

Article I:

Section 12. – The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures...

Section 23. – Every natural person has the right to be let alone and free from government intrusion into the person's private life except as otherwise provided herein.

Article II:

Section 3. – Branches of government. – The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Article V:

Sec. 20(c)(3). – Circuit courts ... shall have exclusive original jurisdiction ... of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged".

Florida Statutes 784.021

Aggravated assault. –

(1) An "aggravated assault" is an assault:

(a) With a deadly weapon without intent to kill; or

(b) With an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Statement Of The Case

On or about July 24, 1993, in a peaceful manner and without the use of a weapon of any kind, the Petitioner, as one of the people domiciled in Florida state and a Florida state Citizen, did escort a female person from the Petitioner's home after numerous demands by the Petitioner that such person leave said home and thereafter said person called the Polk County Sheriff's Department and alleged that the Petitioner assaulted said person.

The Deputy Sheriff that responded to said call, in turn, alleged that the Petitioner committed an act of "aggravated assault with a firearm" under Florida Statutes 784.021 and on August 30, 1993, the Assistant State Attorney, Keith P. Spoto, alleged such charge of "aggravated assault" against the Petitioner in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, and initiated prosecution of the Petitioner.

After further investigation it was found that the incident did not involve a firearm or weapon of any kind and the charge against the Petitioner was changed to "aggravated assault without a firearm" which remained alleged under Florida Statutes 784.021.

Such charge alleged against the Petitioner is not a crime defined under Florida Statutes 784,021, nor does such charge comport with a felony for the court to have jurisdiction under Article V, Section 20(c)(3), of the Florida Constitution.

There was no trial on a felony but the court imposed a nine-month sentence upon the Petitioner on or about February 25, 1994.

The Petitioner discovered that the charge was inconsistent with the statute and did not comport with a felony, that the court was without jurisdiction of such charge, and that there has been an ongoing injury to the Petitioner from the stigma of a felony presumed against the Petitioner without a factual felony charged.

The Petitioner filed a Petition to Vacate the Void Judgment on or about November 1, 2001, for lack of evidence to support the crime charged pursuant to Florida Statutes 784.021 and lack of subject matter jurisdiction in the circuit court without a felony "also charged" consistent with the requirements of the Florida Constitution at Article V, Section 20(c)(3).

The ruling by the Supreme Court of Florida in Perkins v. State of Florida, 576 So.2d 1310 (1991) makes it clear that the court cannot create or expand the law to obtain jurisdiction, such ruling stating at paragraph 32 as follows: "The Florida Constitution requires a certain precision defined by the legislature, not legislation articulated by the judiciary. See Article II, Section 3, Florida Constitution."

The said Petition to Vacate the Void Judgment was denied on February 3, 2003.

The Petitioner appealed the lower court decision on the error of said denial to the District Court of Appeal, Second District of Florida.

The appeals court rendered a "per curiam affirmed" decision of the lower court's denial without opinion.

The foregoing actions of the courts are in violation of the equal protection and due process of law clauses of the Fourteenth Amendment of the United States Constitution.

The Supreme Court of Florida is without jurisdiction for review of such decision pursuant to the Florida Constitution, Article V, Section 3, for lack of expressed opinion.

This petition for writ of certiorari is sought on the error of the appeals court affirming, without opinion, the lower court's denial of the Petition to Vacate the Void Judgment, the petition being founded upon lack of jurisdiction and lack of evidence of the crime charged and for the failure of both state courts to act consistent with the essential requirements of the law as to the specific acts that are prohibited by law and the jurisdiction of the court as defined by the Florida Constitution and the laws of Florida.

The Petitioner seeks reversal of the trial and appeals courts' decisions because the courts were without authority to adjudicate the matters of the case for lack of jurisdiction in the trial court for lack a felony charge for the trial court to have subject matter jurisdiction under Article V. Section 20(c)(3) of the Florida Constitution and lack of evidence of the crime defined in Florida Statutes 784.021.

Reasons For Granting The Petition

The cause for this petition involves a matter of great public interest, namely, that of state officers denying the rights and remedies of the people in Florida and abandoning the Florida Constitution and laws without cause or reason, and acting inconsistent with the essential requirements of the law, refusing to correct an error of the trial court when such is sought and doing so as a matter of course with full knowledge of the error.

The lower court was clearly in error in allowing prosecution and imposing a sentence without the court having jurisdiction of a crime for lack of facts to support the felony crime charged in that the Petitioner was charged with "aggravated assault without a firearm" alleging such to be a violation of Florida Statutes 784.021, which is not a crime defined therein and no factual felony was charged for the court to have jurisdiction under Article V, Section 20(c)(3), Florida Constitution.

The act of the Petitioner that was alleged to be a crime was the reasonable and innocent act of escorting a person from the Petitioner's home without a weapon and without violence or injury to such person and such act was done to preserve the privacy and security of the Petitioners house as protected by the Florida Constitution, Article I, Sections 12 and 23.

The charge was alleged as an offense under a criminal statute which, according to Black's Law Dictionary, Sixth Edition, is a civil matter stating as follows:

> "The word 'offense,' while sometimes used in various senses, generally implies a felony or a misdemeanor infringing public as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty." State v. Sykes, Fla. 434 So.2d 325, 328.

There was no factual felony charged and, therefore, the rules of civil procedure would apply wherein Rule 1.140(b), Fla. R. Civ. P., stating, "Any ground not stated shall be deemed to be waived except any ground showing that the court lacks jurisdiction of the subject matter may be made at anytime."

The lower court acted in a manner repugnant to the Florida rules of court, the Laws of Florida, and the Florida Constitution and was clearly in error in not declaring the judgment void for lack of evidence of the crime charged and lack of criminal jurisdiction over a lesser charge without a felony also charged pursuant to the Florida Constitution, Article V, Section 20(c)(3).

That the appeals court is clearly in error for affirming the errors of the lower court without grounds in the Constitution, the rules, the law and the facts and the challenge is jurisdiction is timely in accord with the rules.

The Supreme Court of Florida is without jurisdiction to review this case in that the Florida Constitution, Article V, Section 3, does not provide for such court to review of the appellate court's "per curiam affirmed" ruling without an opinion.

The Petitioner has suffered irreparable injury by the acts in such courts for which this court must intervene to stop the ongoing injury and the stigma of the presumption that the Petitioner is a convicted felon that attaches to the unlawful prosecution and sentence for which the lower court and prosecutor therein and the appeals court are now responsible.

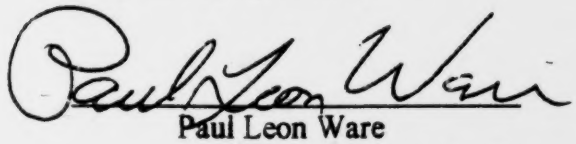
If this petition is not granted to stop the ongoing injury to the Petitioner who is one of the Florida people and a Florida state Citizen with the rights protected by the Florida Constitution, a travesty of justice will be allowed to remain that was instituted by persons that are State officers that have declared under oath that they would not act in such a manner against the Florida Constitution or laws of Florida.

Conclusion

For the above causes setting forth foundation that the charge against the petitioner was not an act prohibited by Florida Statutes 784.021 and that the lower court was without subject matter jurisdiction under the Florida Constitution, Article V, Section 20(c)(3) for lack of a factual felony charged and that the appeals court failed to reverse the error or show foundation for grounds that there was no constitutional error, this petition for a writ of certiorari should be granted as a matter of law to require the

lower courts to correct the error and to prevent further injury by the travesty of justice imposed upon the petitioner by prosecution without evidence of the crime charged and the stigma of the unsupported presumption that the Petitioner is a convicted felon and loss of rights attaching thereto without cause, all of which were caused by persons in the lower and appeals courts acting inconsistent with their oath, duty, the constitution, and the Laws of Florida creating and amending Florida Statutes 784.021.

Executed this 8th day of OCT, , 2003.
Respectfully submitted,



Paul Leon Ware
c/o 6557 Crescent Lake Dr.
Lakeland, Florida state; 33813

Appendix

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A .... Final Order from Appeals Court 1

B .... Final Order from Circuit Court 2, 3

C .... Charging Instrument 4, 5

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IN THE DISTRICT COURT OF
APPEAL OF FLORIDA,
SECOND DISTRICT

PAUL LEON WARE
Appellant,

v.

STATE OF FLORIDA
Appellee.

Case No. 2D03-927

Opinion filed May 7, 2003.

Appeal pursuant to Fla.R.App.P.
9.141(b)(2) from Circuit Court for
Polk County; Ralph Artigliere, Judge

PER CURIAM

Affirmed.

COVINGTON, KELLY, and CANADY, JJ., Concur

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL DISTRICT IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v. CASE NO.: CF93-03221A1-XX

PAUL LEON WARE,
Defendant.

_____/

ORDER DENYING DEFENDANT'S
FIRST AMENDED PETITION TO VACATE VOID JUDGMENT

THIS MATTER is before the court upon Defendant's *First Amended Petition to Vacate Void Judgment*, filed *pro se* pursuant to Rule 3.850(a), Fla. R. Crim. P., on November 21, 2002. After review of the Motion, case file and applicable law, this Court finds as follows:

On September 8, 1995, Defendant was convicted and sentenced to two counts of aggravated assault after he entered a plea of *nolo contendere*. Defendant, in his present Petition, argues 1) The evidence was insufficient to support the charge of aggravated assault; and 2) Because he should have been convicted of only the misdemeanor charge of assault, the circuit court lacked subject matter jurisdiction.

On November 1, 2001, Defendant filed a Petition to Vacate a Void Judgment and to Correct Erroneous Records, which made the same two arguments. On December 5, 2001, the trial court issued an order denying same because it was untimely filed under Rule 3.850(b), Fla. R. Crim. P.

On January 16, 2002, Defendant filed a *Notice of Refusal of Order, Notice of Error, and Petition to Reconsider the Petition to Vacate a Void Judgment Consistent with the Law and the Rules.* On April 10, 2002, the trial court issues an order denying same. On April 24, 2002, Defendant filed a Notice of Appeal relating to the trial court's denial of the original petition. However, the Second District Court of Appeal dismissed the appeal because it was untimely filed.

Procedurally, because the Petition was filed under the authority of Rule 3.850, the Court finds the Petition to be untimely. See Rule 3.850(b), Fla. R. Crim. P. The Petition is therefore DENIED.

Substantively, on issue 1 – The evidence was insufficient to support the charge of aggravated assault – Defendant challenges the sufficiency of the evidence based on his contention that the State failed to allege or prove that he possessed a deadly weapon. However, such argument must be raised on direct appeal and is not cognizable in a 3.850 motion. See Gordon v. State, 717 So.2d 1069, and Childers v. State, 782 So.2d 946 (Fla. 4th DCA 2001). Additionally, such argument was waived by Defendant's failure to raise the argument in the trial court prior to or at arraignment. See Rule 3.190(c), Fla. R. Crim. P.

As to issue 2 – That the court lacked subject matter jurisdiction because Defendant was only guilty of simple assault – such argument must also be raised on direct appeal and is not cognizable in a 3.850 motion. *See* Rule 9.140(b)(2)(A)(ii)a.

For the above procedural and substantive reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion is **DENIED**. Defendant has thirty (30) days form the date of this Order within which to appeal this Order to the Second District Court of Appeal.

DONE AND ORDERED in Bartow, Polk County, Florida this 3rd day of *February*, 2003.

Ralph Artigliere
RALPH ARTIGLIERE, Circuit Judge

cc:
Paul Leon Ware
6557 Crescent Lake Drive
Lakeland, FL 33813

ASA Allen Nelson
RA/gka

(Inapplicable portions omitted)

PAUL LEON WARE E.D. "BUD" DIXON, Clerk
DEFENDANT BY _____

J U D G M E N T

THE DEFENDANT PAUL LEON WARE,
BEING PERSONALLY BEFORE THIS COURT
REPRESENTED BY T.W. WEEKS, III, HIS ATTORNEY
OF RECORD, AND THE STATE REPRESENTED BY
KEITH P. SPOTO, ASSISTANT STATE'S ATTORNEY,
AND HAVING
X ENTERED A PLEA OF NOLO CONTENDERE TO THE
FOLLOWING CRIME(S);

COUNT ONE: AGGRAVATED ASSAULT
WITHOUT A FIREARM;
OFFENSE STATUTE NO.: 784.021; DEGREE OF CRIME: F3;
CASE NO.: CF93-3221A1-XX; OBTS NO.: 5061913

COUNT TWO: BATTERY;
OFFENSE STATUTE NO.: 784.03; DEGREE OF CRIME: M1;
CASE NO.: CF93-3221A1-XX; OBTS NO.: 5061913

COUNT THREE: AGGRAVATED ASSAULT
WITHOOUT A FIREARM;
OFFENSE STATUTE NO.: 784.021; DEGREE OF CRIME: F3;
CASE NO.: CF93-3221A1-XX; OBTS NO.: 5061913

COUNT FOUR: BATTERY;
OFFENSE STATUTE NO.: 784.03; DEGREE OF CRIME: M1;
CASE NO.: CF93-3221A1-XX; OBTS NO.: (NONE)

X AND NO CAUSE BEING SHOWN WHY THE
DEFENDANT SHOULD NOT BE ADJUDICATED GUILTY, IT

IS ORDERED THAT THE DEFENDANT IS HEREBY
ADJUDICATED GUILTY OF THE ABOVE CRIME(S).

PAGE 1 OF _____

(Inapplicable portions omitted)

PRE-SENTENCE INVESTIGATION DISPOSITION

MEMO OF SENTENCE/
ORDER OF THE COURT
IN THE CIRCUIT COURT POLK COUNTY,
FLORIDA / CRIMINAL DIVISION

DIV: F5 3I #:93-10063
DATE: 02/25/94 BONDSMAN: _____ DEF LOC: CASH
BOND TOTAL

CASE NO.: CF93-3221A1-XX STATE VS: WARE PAUL LEON

SEQ#	CT.#		FINE/CST	BD SRTY/CASH
W C 001	1	AGGRAVATED ASSAULT	1731668	5,000.
W C 003	2	DOM VIOL BATTERY		
W C 002	3	AGGRAVATED ASSAULT	1731669	
W C 004	4	BATTERY		

NO MORE CHARGES

S.A. Spoto JUDGE CHARLES B. CURRY
COURT REPORTER Polly Cipenas
****

DEFENDANT PLEA ADJUDICATION

☐ Pres w/atty T.Weeks ☐ Nolo Cont Prev. as Chg ☐ Guilty
F/A deleted

☐ FINE REDUCED TO JUDGMENT $ Ct. 1 & 3

☐ DEFT PLACED ON __ PROB 5 Y

W/in 60 days of rel – mental Health eval. & any treat.

CONDITION OF PROBATION TO RUN CONCURR

$ 288.00 COURT COSTS DUE W/IN as dir.

Cts 2 & 4 = 90 days Co. jail Ea. Ct. Conc & Concur. W/Ct 1

No contact W/victims = & no weapons.
Cash Bond – can be released.

C./all (Cond. of prob.)

9 MOS CT# 1
9 MOS CT# 3 TO RUN CONCUR WITH 1

C. Sheila
finance
2/28/94

☐ TO BE GIVEN CREDIT FOR all TIME SERVED

DATE 2/25/94 BY (Sig.) M.Fink D.C.

(Sig.) Charles B. Curry
CIRCUIT JUDGE